

Serial No. 10/507,174
Amendment Dated: September 17, 2007
Reply to Office Action Mailed: May 16, 2007
Attorney Docket No. 038665.55362US

Amendments to the Drawings:

The attached sheet of drawings includes new Figure 2, which illustrates a bag having a volume in a range 5% to 10% less than that of the explosives cavity.

Attachment: New Sheet

REMARKS

Reconsideration and allowance of the above-identified application are respectfully requested. Claims 1-4 are now pending, wherein claims 1 and 4 are amended and claims 5-10 are canceled.

In the third paragraph of the Office Action the drawings are objected to as not illustrating the feature of claim 4. Submitted herewith is new Figure 2 illustrating this feature. Accordingly, withdrawal of this ground of rejection is respectfully requested.

In the fourth and fifth paragraphs of the Office Action claims 1-4 are rejected under 35 U.S.C. § 112, second paragraph for omitting an essential element and for indefiniteness. These grounds of rejection are respectfully traversed.

Claim 1 has been amended to include the alleged essential element.

Claims 1-4 are rejected for indefiniteness on the grounds that it is unclear whether the ordnance of these claims refers to the one depicted in Figure 1 or to any of the other disclosed embodiments. It appears that this rejection is based on the breadth of claims 1-4, which recites a generic ordnance, but does not specify whether the ordnance is a shell, mortar, rocket, bomb, warhead, projectile, etc.

Breadth of claim is not a proper ground for rejecting a claim for indefiniteness under 35 U.S.C. § 112, second paragraph. Specifically, M.P.E.P. § 2173.04 makes clear that “[i]f the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.” It is respectfully submitted that there is nothing unclear about the scope of claims 1-4, which recite a generic ordnance, and Applicants have not otherwise indicated that they intend the invention to be of a different scope from such a generic ordnance recited in these claims. Accordingly, because the ground of rejection of claims 1-4 for indefiniteness is not a proper ground under 35 U.S.C. § 112, second paragraph, this rejection should be withdrawn. Furthermore, because Figure 1 illustrates the generic ordnance recited in claims 1-4, it is not necessary to illustrate the specific ordnance types described in the specification.

Claims 3 and 4 are rejected for indefiniteness because “it is unclear whether the applicant is attempting to claim an embodiment in which the ordnance cavity is not ‘filled with explosive material’”. Applicants’ claims 3 and 4 recite a structural characteristic of the bag relative to the cavity when the bag is in an unstretched state, while claim 1 recites that the bag contains explosives material. Accordingly, Applicants’ dependent claims 3 and 4, which incorporate the elements of independent claim 1, recite characteristics of the bag in two

different states, i.e., when the bag contains explosives and in an unstretched state. Applicants are not aware of any law or regulation that hold a claim indefinite for reciting characteristics of an element in more than one state. Accordingly, withdrawal of this ground of rejection is respectfully requested.

Applicants have amended claim 4 into independent form. Because claim 4 was not rejected on prior art grounds, and the rejection under 35 U.S.C. § 112, second paragraph has been rebutted, it is respectfully submitted that this claim is now in condition for allowance. Notice to this effect is earnestly solicited.

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,373,883 to Ferrel ("Ferrel"). This ground of rejection is respectfully traversed.

Ferrel does not anticipate Applicants' claim 1 because Ferrel does not disclose an ordnance containing an "explosives material comprising PBX."

The only explosives material disclosed by Ferrel is nitro-glycerine jell and TNT. Ferrel selects these explosives material because the "purpose of the invention is to provide a means for detonating a shell or bomb which is so sensitive to impact that even the fabric, ply-wood or the thin sheet of metal covering of an airplane wing or fuselage is more than sufficient to insure instant detonation of the explosive charge of the shell." (Col. 1, lines 31-36). Therefore,

Ferrel does not disclose an "explosives material comprising PBX." In contrast to the nitro-glycerin jell or TNT of Ferrel, which is highly sensitive to mechanical shock, the use of PBX as an explosives material, as recited in Applicants' claim 1, is an insensitive munitions that is designed to not readily detonate when exposed to, for example, mechanical shock.

The use of PBX as an explosives material is beneficial because it is easier and safer to handle than other explosive materials, and makes the ordnance easier to decommission. If the present invention used the explosives taught by Ferrel, then the decommissioning would involve either scooping out the nitro-glycerine jell or melting the TNT and pouring it out. In contrast, the present invention allows the explosive to be removed with the whole bag, which reduces the exposure of the decommissioner to the explosive (see page 5, lines 8-14).

Claims 2 and 3 are patentably distinguishable over Ferrel at least by virtue of their dependency from claim 1.

For at least those reasons stated above, it is respectfully requested that the rejection of claims 1-3 as being anticipated by Ferrel be withdrawn.

In light of the foregoing remarks, this application should be in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this amendment or the application in general,

a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #038665.55362US).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gary R. Edwards', is written over a horizontal line.

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